

CONFIDENTIAL - PROTECTED HEALTH INFORMATION

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA
3 ERIE DIVISION

4 UNITED STATES OF AMERICA, ex rel.)
5 DILBAGH SINGH, M.D., PAUL KIRSCH,)
6 M.D., V. RAO NADELLA, M.D., and)
7 MARTIN JACOBS, M.D.,)

8 Relators,)

9 vs.)

10) Civil Action
11) No. 04-186E
12)

13 BRADFORD REGIONAL MEDICAL CENTER,)
14 V&S MEDICAL ASSOCIATES, LLC,)
15 PETER VACCARO, M.D., KAMRAN SALEH,)
16 M.D., and DOES I through XX,)

17 Defendants.)

18 DEPOSITION OF KAMRAN SALEH, M.D.

19 THURSDAY, AUGUST 9, 2007

20 Deposition of KAMRAN SALEH, M.D., called as a
21 witness by the Plaintiffs, taken pursuant to Notice of
22 Deposition and the Federal Rules of Civil Procedure,
23 by and before Joy A. Hartman, a Court Reporter and
24 Notary Public in and for the Commonwealth of
25 Pennsylvania, at the offices of Fox Rothschild, 625
26 Liberty Avenue, 29th Floor, Pittsburgh, Pennsylvania
27 commencing at 9:31 a.m. on the day and date above set
28 forth.

JOHNSON and MIMLESS
(412) 765-0744

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1 V&S Associates?

2 A. Well, V&S is what I own. I am part owner in
3 that.

4 Q. It still exists?

5 A. Yes.

6 Q. When did you form V&S?

7 A. Excuse me?

8 Q. When did you form V&S?

9 A. 2000. It was April of 2000.

10 Q. And V&S is a corporation, correct?

11 A. That's right, L.L.C.

12 Q. L.L.C., and it's full name is V&S Associates
13 L.L.C.?

14 A. V&S Medical Associates, L.L.C.

15 Q. Who were the original shareholders or members
16 of the company?

17 A. Me, Dr. Saleh, and Dr. Vaccaro.

18 Q. Is the ownership the same today?

19 A. Yes.

20 Q. Have you ever had any other owners?

21 A. No.

22 Q. Do you own it 50-50?

23 A. Yes.

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1 A. Yes.

2 Q. What types of referrals would you make?

3 A. Like, if patients needed a cardiac
4 catheterization, we would send the patient for the
5 cardiac catheterization. Some patients need an
6 endocrine evaluation, so we would send them to an
7 endocrinologist or urologist. It was orthopedic
8 surgeons, so all kind of referrals, whatever the
9 patient's need is.

10 Q. Would you also refer patients to the hospital
11 to be admitted as inpatients?

12 A. Yes, we do.

13 Q. Is it fair to say that most of your referrals
14 to a hospital went to Bradford?

15 MR. RYCHCIK: Objection as to the form.

16 A. Well, we refer patients wherever the
17 opportunity was, wherever the need was. If there is
18 somebody who needed to be admitted to the hospital, we
19 admitted them to Bradford Hospital, yes.

20 Q. Did you admit very many inpatients to Olean
21 Hospital --

22 A. No.

23 Q. -- or other hospitals other than Bradford?

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1 A. No.

2 Q. Outpatient referrals, they would -- would
3 outpatient referrals primarily be referrals to have
4 tests performed on somebody?

5 A. Tests, plus evaluation by the doctors.

6 Q. Were a portion of those outpatient referrals
7 referred to Bradford or any other hospital?

8 A. Part of it to Bradford, part of it to Hamot
9 Medical Center, some to Cleveland Clinic, and some to
10 UPMC, depending on the need.

11 Q. What would be your basis for distinguishing
12 which hospital you would refer somebody to for an
13 outpatient test?

14 A. For the testing?

15 Q. Yes.

16 A. That would be for whether the test is available
17 in that facility and what time frame they can get the
18 test done and what kind of reading and the quality of
19 the test performed.

20 Q. Were there certain types of services that could
21 be performed at multiple hospitals?

22 A. Yes.

23 Q. What types of services would those have been?

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1 A. Like blood work, like chest x-ray.

2 Q. And if you had to refer people out for those
3 types of services, would it be your typical practice
4 to refer them over to Bradford?

5 MR. RYCHCIK: Objection as to the form.

6 A. Well, what we look at when we refer the patient
7 for the lab work or for the x-rays is for the
8 convenience of the patient. Most of our population is
9 elderly patients, and they actually -- even to come to
10 the doctor's office, they have to find a ride to come.
11 So to send them farther away is more difficult, so
12 they all usually prefer the closest possible testing
13 place.

14 Q. And that was Bradford, correct?

15 A. And that is Bradford.

16 Q. These other places you mentioned -- Hamot
17 Medical Center?

18 A. Yes.

19 Q. Where is that?

20 A. It is in Erie.

21 Q. How far away is that from Bradford?

22 A. An hour and a half.

23 Q. I cannot remember the name of the other medical

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1 center or facility.

2 A. Olean General Hospital.

3 Q. I know you mentioned Olean, but I thought you
4 mentioned one other one.

5 A. UPMC.

6 Q. UPMC. What is that?

7 A. That is the University of Pittsburgh.

8 Q. How far away is Pittsburgh from Bradford?

9 A. About three and a half hours.

10 Q. During the same period that we have been
11 discussing before you got the camera, would you
12 describe yourself and Dr. Vaccaro as being a large
13 referral source for the hospital, Bradford Hospital?

14 MR. RYCHCIK: Objection as to the form of
15 the question.

16 A. I can't really tell you as to whether it is a
17 large referral source, but one of the referrals as for
18 all the community organization do. So we are a part
19 of them, one part of them.

20 Q. Do you have any knowledge of how you stacked up
21 to other physicians in terms of how much business was
22 referred to Bradford?

23 A. I didn't understand the question.

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1 Q. I am trying to focus on how V&S compared to
2 other physicians in the amount of business that they
3 referred to Bradford. Did you all refer more or less
4 than other physicians in the area?

5 So my question is: During this time period, do
6 you have any information on which to compare your
7 referrals to other physicians' referrals?

8 A. I don't have any information on that.

9 Q. Do you have any belief?

10 A. Well, I mean we are a two-physician practice.
11 Most of the practices are solo practices, so that
12 increases the number of referrals; but Dr. Jamil and
13 Dr. Kirsch have significant referrals to the hospital.

14 Q. Did you ever have an occasion to attempt to
15 quantify the number or dollar value of your referrals
16 to Bradford during this period?

17 A. I don't recall it.

18 Q. Now, I want to talk a little bit about your
19 decision to lease this nuclear camera. First off,
20 describe for me what the camera was.

21 A. It is a GE nuclear camera, and the nuclear
22 camera provides the nuclear testing, and the testing
23 done is like cardiac stress testing, bone scan,

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1 thyroid scan. It is those kind of tests that are
2 considered specialized x-ray testing.

3 Q. Is this nuclear testing similar to or different
4 from MRIs and CT scans?

5 A. It is different.

6 Q. How is it different?

7 A. Because the indications are different, and the
8 tests are different.

9 Q. Are there certain types of tests that --
10 actually, I'm sorry. I want to rephrase this. You
11 perform a test in order to learn something about a
12 patient, correct?

13 A. That's right.

14 Q. Are there ever circumstances where you could
15 either go with a nuclear camera or with a CT scan or
16 an MRI?

17 A. Uncommon.

18 Q. Uncommon?

19 A. Yes.

20 Q. So, typically, the type of information you are
21 seeking to acquire would lead you to pick one or the
22 other?

23 A. That's true.

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1 Bradford?

2 A. Most of the time, that would have been
3 Bradford.

4 Q. After you got your nuclear camera, your
5 referrals to Bradford for nuclear tests would have
6 reduced, because you were doing a large number of them
7 in your own office, correct?

8 A. Yes.

9 Q. Other than that, do you believe there was any
10 change in your referral patterns during the period
11 that you owned or leased the nuclear camera?

12 MR. RYCHCIK: Are you talking about just
13 nuclear camera referral patterns?

14 MR. SIMPSON: Other than nuclear camera.

15 Q. Nuclear camera referrals went down because you
16 were doing them in your own office. Were there any
17 other types of referrals that you had been doing
18 previously that your referral patterns changed after
19 you got the camera?

20 A. No.

21 Q. Now, at some point, you were approached by
22 Bradford with some concerns they had about the fact
23 that you had leased this camera, correct?

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1 A. Yes, we did.

2 Q. And who was it that you hired as the first
3 attorney you hired to represent you in discussions
4 with the hospital relating to the camera issue?

5 A. Ed Kabala.

6 Q. And did you also work with Marc Raspanti?

7 A. Yes.

8 Q. But Mr. Kabala came first, I guess?

9 A. That's true.

10 Q. At some point, did the hospital come to you
11 with concerns that by getting this nuclear camera that
12 you would be violating a hospital policy on
13 non-competition?

14 A. Yes.

15 Q. Was that Mr. Leonhardt that came to you?

16 A. I don't recall.

17 Q. Did he do that -- do you recall whether he
18 spoke with you orally about it or whether he wrote you
19 a letter?

20 A. Both were done. Orally, and then a letter was
21 sent, too.

22 Q. I will go through some documents later, but I
23 just want to kind of walk through the general stages

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1 first. You all had a bunch of back and forth about
2 whether this policy was legal, correct?

3 A. That's true.

4 Q. And you took the position that the hospital's
5 attempt to enforce this policy was an illegal attempt
6 to economic credentialing; is that correct?

7 MR. RYCHCIK: Objection as to the form.

8 You are asking him for a legal conclusion.

9 MR. SIMPSON: I am not asking him for a
10 conclusion.

11 Q. I am saying you took that position with the
12 hospital, didn't you?

13 A. Initially, when the hospital did that, we
14 thought that economic credentialing was the way to
15 stop our privileges for referrals. That was the
16 initial thinking. That is why we were concerned, and
17 we wanted a legal opinion on that. But after several
18 discussions later, it became more clear as to the
19 basis for what the reason was.

20 Q. And was it your understanding that -- let me
21 put it this way: Do you believe the hospital ever had
22 any intention of actually denying you staff privileges
23 at the hospital?

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1 A. Yes.

2 Q. So you didn't see it as a mere bluff?

3 A. That's true.

4 Q. Basically, what the hospital was telling you
5 was that if you are in a business that is in
6 competition with the hospital, you are not entitled to
7 have staff privileges with the hospital, correct?

8 A. That's true.

9 MR. MULHOLLAND: Objection to the
10 characterization of what the hospital may or
11 may not have told him.

12 Q. That was your understanding of what the
13 hospital position was, correct?

14 A. That's true.

15 Q. Now, you stated you didn't believe it was a
16 bluff; but did it also become apparent to you that the
17 hospital would rather not terminate your privileges,
18 but would rather work out some kind of arrangement
19 with you?

20 A. That started appearing later in the course,
21 much later in the course. Initially, it was not
22 obvious.

23 Q. Who made the first proposal that you and the

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1 equipment?

2 MR. SIMPSON: I'm sorry.

3 Q. Did the hospital pay you rent to keep the
4 camera on your premises?

5 A. Yes.

6 Q. And that was in addition to all of the payments
7 under the sublease?

8 A. That's true.

9 Q. While the old camera was at your premises, was
10 it being used --

11 A. Yes.

12 Q. -- or was it sitting idle?

13 A. No. It was being used.

14 Q. How frequently was it being used?

15 A. As frequently as it was being used before. But
16 since we signed the lease agreement, the sublease
17 agreement now, the payments that were going was the
18 income for the hospital.

19 Q. The patients for whom it was being used, were
20 they still your patients, or did the hospital send
21 over other patients that were not your patients to
22 have tests done?

23 A. There were sometimes, yes.

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1 MR. RYCHCIK: I am going to object to the
2 extent I don't want you to divulge any types of
3 communications you might have had with Mr.
4 Raspanti or any of your counsel, for that
5 matter, and I am going to instruct you not to
6 answer to the extent that is what you are
7 asking.

8 Q. All I am asking is -- well, would you typically
9 be sent a draft of the letter before he would send the
10 final copy out to opposing counsel?

11 MR. SIMPSON: I am not sure whether that
12 is objectionable or not.

13 MR. RYCHCIK: I still think that is. I
14 still think it is asking whether or not there
15 was a communication, and I don't think I want
16 him to answer that question. You could ask him
17 another question, but --

18 MR. SIMPSON: Well, I have already asked
19 whether he recalled seeing this letter.

20 Q. Let me ask you this question: Flip to page
21 159, please, the last full paragraph. The last full
22 paragraph starts out by saying, "We know of no case
23 that more clearly establishes a hospital's attempt to

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1 extract an exclusive referral stream from a
2 physician."

3 My question to you is: At that time, was it
4 your belief that the hospital was trying to extract a
5 referral stream from you by invoking the non-compete
6 clause?

7 A. Yes. When initially we found out that there is
8 a non-compete clause, that was our understanding that
9 the hospital is trying to get referrals and making it
10 tied to our hospital privileges. That is why you can
11 see, initially, we were concerned, and we hired the
12 counsel, and we advised them to get the counsel, too,
13 to make sure that that is not the reason why this
14 economic credentialing was based on.

15 As you can see, after several months, almost
16 two years of discussion, it was clear that that was
17 not the basis for all of this; but initially, yes,
18 that was the concern.

19 Q. It was your belief that the hospital was trying
20 to get the referrals back that it had lost by you
21 doing them in your office?

22 MR. RYCHCIK: Objection as to the form of
23 the question.

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1 month.

2 Q. Is this one of the documents that comes out at
3 the end-of-the-the-month report?

4 MR. RYCHCIK: Are you talking about this
5 time period or these dates?

6 MR. SIMPSON: Yes. The time period when
7 these date are.

8 Q. I am trying to figure out if this is a
9 routinely printed document printed at that time or was
10 this printed out for a special reason?

11 A. I don't think it was a routinely printed out
12 document, so it must have been prepared to get some
13 information.

14 Q. You don't know how you used that information?

15 A. That is right. It could just be for our own
16 purposes.

17 Q. I'm going to mark as Exhibit 30 all the
18 documents you handed to us this morning.

19 (Saleh Deposition Exhibit No. 30 was
20 marked for identification.)

21 Q. Exhibit 30 is Bates labeled 3154 through 3170.
22 The first page is a statement of October 2003. Is
23 this a statement for -- what is this first page?

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1 A. This is a statement that we sent to the
2 hospital when the hospital was using the nuclear
3 camera at our facility.

4 Q. So the \$4,879.84 is your bill to the hospital
5 for the rent --

6 A. The cost.

7 Q. -- the cost of keeping the camera on your site?

8 A. Not just the cost. It includes the running of
9 the camera, too.

10 Q. But it is payments that they are making to you
11 for keeping the camera at your facility instead of at
12 the hospital, right?

13 A. Yes.

14 Q. And those payments are in addition to the other
15 payments that would be under the sublease?

16 A. That's true.

17 Q. And the next page is a copy of their check to
18 you for that amount, it looks like?

19 A. Yes.

20 Q. And the next page 3156 is a similar statement
21 for November of 2003, correct?

22 A. Yes, sir.

23 Q. Then the next page, it says, "Receipts," and

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1 there is no date on it, though, that I can see. Is
2 this a -- how can you tell what period this is for?

3 A. It is after November, because it says November
4 rental statement.

5 Q. Oh, I see. Okay. So this is, basically, your
6 receipt for the payment that you received, and you
7 received a total -- the top line is "Total receipts,
8 \$24,922.31." What is that payment? What is that?

9 A. That is the payment received by use of the
10 nuclear camera.

11 Q. Is that the sublease payment?

12 A. No. The way it was handled initially was after
13 it came into the contract with the hospital for
14 sublease, then the camera stayed at our facility for
15 several months, and then used in our facility; and
16 when it was used, we continued to provide the
17 services, but the income that was generated from that
18 date on was the hospital's money.

19 So this is the income brought in from that day
20 on, and then you can see that there are expenses that
21 are deducted. So whatever it was less was there, and
22 then their rental statement, and then the actual
23 payment to BRMC was made of this much dollars.

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1 Q. So this was a payment made by you to BRMC?

2 A. Yes.

3 Q. So the 424,922 is payments that you received

4 from --

5 A. That's right.

6 Q. -- from --

7 A. The operation of the nuclear camera.

8 Q. At that point, were you billing for the tests?

9 A. Yes.

10 Q. So you were billing for them, and then you were

11 collecting --

12 A. Right.

13 Q. So the camera had been subleased to Bradford at

14 that time?

15 A. Right.

16 Q. But Bradford wasn't billing for the tests?

17 A. That's true.

18 Q. You were billing -- you would collect payment

19 from insurers or whoever, and then you would subtract

20 out a 10 percent billing charge, correct?

21 A. Yes.

22 Q. And then you would also subtract out a 24

23 percent reading charge for Dr. O'Donnell?

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1 A. Yes.

2 Q. Now, is that 24 percent reading charge, is that
3 a pass-through charge?

4 A. Yes. It goes to Dr. O'Donnell.

5 Q. You weren't making any profit on that number?

6 A. I don't remember exactly.

7 Q. And then there is something for medication
8 receipts. What is that?

9 A. Like Cardiolite and all the medication that is
10 used, you buy the medication, and then the insurance
11 company pays you for that.

12 Q. So that would be for medication, would you have
13 any profit on that number?

14 A. No.

15 Q. So that is your actual cost of purchasing the
16 medication that was used in the test that you are
17 performing for Bradford?

18 A. That's true.

19 Q. So when you subtract out that, you come to the
20 9,180.76, and then you subtract out the rental payment
21 that they owed you, and you come to 4,593.94, which
22 you paid to them?

23 A. That's true.

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1 Q. And then the next two pages show the same stuff
2 for December of 2003?

3 A. Uh-huh.

4 Q. And then the next page shows a statement for
5 January of 2004, but I don't see any receipts page, a
6 similar receipts page for January of 2004, and did you
7 think that was omitted, or did they cheat you that
8 month? No offense.

9 A. No. I think maybe the receipt was not enough
10 to go along with that in that month. So, therefore,
11 it was totaled with the February statement. After the
12 February statement, you can see.

13 Q. So you got the February statement on page 3161,
14 and then on 3162, you have the February receipts page,
15 just like we discussed before, which reflects that you
16 all ended up making a payment to Bradford of 7652?

17 A. That's true.

18 Q. And then that includes -- does that include --
19 is this, like, a two-month type page? Does that
20 include January and February?

21 A. No. It just saves that February statement, so
22 that did not include a January statement. So if you
23 go farther, you can see --

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1 Q. But your total receipts for that period are
2 42,000 plus, which is substantially more than the
3 27,000?

4 A. Because this is probably two months.

5 Q. So it is two months of receipts, less two
6 months of expenses?

7 A. Yes.

8 Q. And then you have the same thing the next
9 couple of pages for March of 2004, and then the next
10 two pages are the same thing for April of 2004; and
11 then you have a statement from May of 2004, correct?

12 A. That is true.

13 Q. But there is no separate receipts page?

14 A. That's right.

15 Q. And then a statement for June and then a
16 receipts page following that, which looks like it
17 includes monies from several months.

18 A. Yes.

19 Q. But if you take all of these receipts pages,
20 they cover that whole period that the statements refer
21 to?

22 A. Right.

23 Q. And in the last couple of months there, say,

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1 May -- in May, there is a rent charge of 2,500 and a
2 secretarial support of 1,000, and then in June, there
3 is a 25 rent, and no secretarial support. There are a
4 lot of things that were included in previous months
5 that aren't included in those months?

6 A. They stopped doing the stress test at that
7 time, so there is no fee for secretarial support or
8 other support.

9 Q. So at this time, the equipment was in your
10 office, but it wasn't being used?

11 A. That particular month.

12 Q. So in April it was not used?

13 A. April?

14 Q. Page 3165?

15 A. April, right.

16 Q. And then for May, it was not used, correct?

17 A. Correct.

18 Q. And then in June it was also not used?

19 A. Right.

20 Q. So let's say in April, May, and June, it wasn't
21 being used?

22 A. That is right.

23 Q. Do you know if the hospital -- had you gotten

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1 the new equipment at that time, the new camera by that
2 time?

3 A. I don't know for sure if that is the time
4 period.

5 Q. Let me ask you this: Did you return the old
6 camera at the same time you got the new camera, or was
7 there an overlap?

8 A. There was an overlap.

9 Q. There was an overlap of time when you had the
10 old camera and Bradford had the new camera?

11 A. Yes.

12 Q. Let's look at the very last page of this
13 exhibit, 3170. This is another vendor QuickReport
14 like the ones we had talked about before.

15 A. Yes.

16 Q. So is that yet one more page?

17 A. This is just to show the amount that we have
18 talked about in those statements, those are being paid
19 to the hospital, so all the --

20 Q. These are not receipts by you? These are
21 payments by you?

22 A. Yes.

23 Q. I understood they were --